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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,863	02/24/2004	Johan van de Groenendaal	063170.6774 (20000213-CON)	3676
5073	7590	04/05/2007	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			PHAM, MICHAEL	
			ART UNIT	PAPER NUMBER
			2167	
			NOTIFICATION DATE	DELIVERY MODE
			04/05/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mike.furr@bakerbotts.com
ptomail1@bakerbotts.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/786,863

Applicant(s)

GROENENDAAL ET AL.

Examiner

Michael D. Pham

MR.

Art Unit

2167

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1-14.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

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Cam Y Tung
primary Examiner
Cam Y Tung

Continuation of 3. NOTE: New claims 15-20, would require further search and/or reconsideration.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's have asserted the following (lettered):

A. 101 rejections directed towards claims 10 and 14. Asserting that when an abstract idea is reduced to a practical application, the abstract idea no longer stands if the practical application of the abstract idea produces a useful, concrete, and tangible result. Citing *In re Alappat*, 33 F.3d 1526, 1544, 31 USPQ2d 1545, 1557 (Fed. Cir. 1994) and *State Street*, 149 F.3d at 1373, 47 USPQ2d at 1601-02.

In response, the examiner respectfully disagrees. Applicant's specification, page 2 state that transmission maybe wireless. Signals, waves, ratidation, transmissions, links; wires, fibers, pieces of paper with instructions written on them, or other items that are not physical articles or objects and/or items which would not structurally and functionally be interconnected to the software in such a manner as to enable the software to act as a computer component and realize any functionality.

Further, the claim does not provide anytype of machine or hardware to enable the functionality. That is to say, software code alone is an abstract idea because when the code is not embodied on an acceptable computer-readable medium/media it's functionality can not be recognized by a computer. Since the whole thing is merely abstract idea, the claims lack a useful, concrete, tangible result.

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

Therefore, rejection under 35 U.S.C. 101 would be maintained.

B. 101 rejection directed towards claims 1 through 9. Asserting that even assuming claim 1-9 are entirely software *per se* that it was held in *Eolas tech v. Microsoft* 399 F. 3d 1325, 1339. that software code alone qualifies without question, as patentable subject matter under 35 U.S.C. 101.

In response, the examiner respectfully disagrees. The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because "[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.").

c. That the office action does not disclose a relational interface adapted to receive a relational query from a software application requesting management information from a specified network device; a relational mapper adapted to translate the relational query received through the relational interface from the software application, to native protocol messages according to an access protocol associated with the network device; and a protocol transaction handler adapted to handle the native protocol messages as a transaction with the network device, and return a result of the transaction to the software application.

Asserting specifically, that Bodamer fails to disclose translating a relational query "to native protocol messages according to an access protocol associated with the network device" of claim 1.

In response, it is respectfully submitted, that claims 1, 3-4, 9-10, 16, and 18 recite several instances of the phrase "adapted to" or "coded to" which suggests or makes optional but does not require the steps to be performed or does not limit a claim to a particular structure. See MPEP 2111.04. Limitations, as is, are not being positively claimed. The examiner respectfully suggests removing this phrase, to more positively claim the limitation.

a relational mapper is taught by the cited references (i.e. abstract, agent). Hence, Bodamer discloses a relational mapper (agent). As to a relational interface, bodammer further discloses a relational interface (abstract, API). Hence, Bodamer discloses a relational interface (API). Lastly, Bodamer discloses a protocol transaction handler (local server).

However, suppose the limitations were positively being claimed. Limitations would still be read off of Bodamer in combination with Babu.

Bodamer discloses "a relational interface" (col. 15 lines 5-15, local server receives SQL statement, hence must have a relational interface) "adapted to receive a relational query" (col. 15 l. 5-15, SQL is a well known relational query language, hence an sql statement can be a relational query) "from a software application" (abstract, client application) "requesting management information" (Abstract, client request) "from a specified network device" (col. 4-8, determines if client statement includes reference to a foreign database system);

"a relational mapper" (agent) "adapted to translate the relational query received through the relational interface from the software application" (col. 10 lines 50-53, agent receives query request and translates for foreign database server), "to native protocol messages according to an access protocol associated with the network device" (Col. 10 lines 44-48, the conversion module in the agent process converts the data types to the format of the foreign database server using internal conversion routines or registered routines supplied by drivers); and

"a protocol transaction handler" (abstract, local server) adapted to handle the native protocol messages as a transaction with the network device (col. 10 lines 41-44, local server sends request to agent. col. 10 lines 58-60, local server can then complete execution of the client statement based upon the results received from foreign process), and return a result of the transaction to the software application (col. 8 line 59, returns results to client in the format of the local server).

However, Bodamer does not explicitly disclose "network management information". Bodamer does however disclose retrieval of data for a client application as shown above.

However, Babu disclosed collecting, detecting, changes, reporting on, and managing network device information (col. 1 lines 5-10).

Both Bodamer and Babu are directed towards the same field of endeavor that is, heterogeneous systems. For the above reasons it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied Babu's teaching of collecting network device information to that of Bodamer's system in order to have a network information collection mechanism that can adapt to new devices when they are added to a network.

- Claims 9-11 are similarly rejected under the same grounds as claim 1.

Therefore, the rejections directed towards claims 1-14 are maintained.